

OCT 13 2020

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A CA General Partnership

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA

BORCHARD & REINO PLAZA, A CA
General Partnership;

Petitioner,

vs.

SKBB INVESTMENTS, A CA Limited
Partnership; DOES 1 to 5;

Respondents.

Case No.

PETITION TO COMPEL ARBITRATION

PETITIONER ALLEGES:

1. Petitioner BORCHARD & REINO PLAZA ("Petitioner") is, and at all times herein mentioned was, a California General Partnership.

2. Respondent, SKBB INVESTMENTS ("Respondent") is, and at all times herein mentioned was, a California Limited Partnership.

3. Plaintiff is ignorant of the true names and capacities of Respondents sued herein as Does 1 through 5, inclusive, and therefore sues them by such fictitious names. Petitioner will amend this Petition to allege their true names and capacities when and if ascertained.

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4. Petitioner seeks to compel arbitration under the terms of a Ground Lease dated August 12, 1970 originally executed by Trustees of General Electric Pension Trust as Lessor and Marvin A. Pomerantz as Lessee for the premises described as "Thrifty Drug Store No. 410, Newbury Park (Thousand Oaks) California" (hereafter, the "Land.") A true and correct copy of the Ground Lease is attached hereto as Exhibit A and incorporated herein.

5. Petitioner is the successor in interest to the original Lessee under the Ground Lease pursuant to an Assignment of Ground Lease and Deed made in December 2003. A true and correct copy of the Assignment is attached hereto as Exhibit B and incorporated herein.

6. Petitioner is informed and believes that Respondent and Does 1 to 5 are the successors-in-interest to the original Lessor under the Ground Lease. At the time that Petitioner became the Assignee/Lessee, Respondent was already acting as Lessor for the Land.

7. As set forth in Paragraph 18.01, the Ground Lease provides a series of options to renew for seven consecutive terms of five years each. Paragraph 18.01 further provides the basic rental for each renewal term shall be determined in the manner set forth in Sections 18.02 and 18.03 of the Ground Lease.

8. In accordance with Paragraph 18.01, Petitioner has timely given written notice of Petitioner's election to exercise the option for a renewed lease term from September 1, 2020 through August 31, 2025.

9. Paragraph 18.03 of the Ground Lease provides that the basic rental for the second through the seventh renewal terms shall be "the greater of (a) seven percent (7%) of the appraised value of the Land on the first day of the eighth month preceding each such renewal term, as determined in the manner set forth in Section 20.02 of [the] Lease" or (in summary) a CPI increase over the prior period's ground rent.

10. Paragraph 20.02 provides for "Appraisal" to be performed by an appraiser who is a qualified member of the American Institute of Real Estate Appraisers (or successor of such institute) with extensive experience in the appraisal of properties in California.

11. In connection with the exercise of the most recent option period, Respondent presented Petitioner with an Appraisal as of January 1, 2020 using a Market Extraction Approach which set a value of \$3,750,000.00 for the Land. In accordance therewith, Respondent notified Petitioner the basic rent would increase by 56% from \$168,000.00 per year to \$262,500.00 for the renewal term.

12. It has been the custom and practice of Petitioner and Respondent, upon time for renewal of the Ground Lease term, to negotiate, as appropriate, for the establishment of the basic rent for the new term. Accordingly, upon receipt of the appraisal submitted by Respondent, Petitioner retained the services of an appraiser with the qualifications set forth in Paragraph 20.02, who then prepared an Appraisal using the Sales Comparison Approach which found the value of the Land to be \$2,330,000.00.

13. Respondent refused to consider the appraisal submitted by Petitioner and asserted, for the first time during the decades' long relationship between these parties, that Respondent had sole authority under the terms of the Ground Lease to determine what the new basic rent amount would be.

14. Accordingly, a controversy has arisen between Petitioner and Respondent as to the appraised value of the Land and the corresponding amount of basic rent for the renewal term. Among other items, Petitioner disputes that Respondent has the right under the terms of the Ground Lease (as well as the covenant of good faith and fair dealing implied therein) to shop around for the highest appraised value for the Land and then unilaterally try to force Petitioner to pay rent based upon such appraisal, regardless of its merit.

15. The aforementioned Paragraph 20.02 under which Respondent obtained its appraisal is part of Article XX of the Ground Lease which addresses "Arbitration and Appraisers." Paragraph 20.01 provides that questions and conflicts under the Ground Lease shall be determined by arbitration with questions to be submitted to a panel of 3 arbitrators (or, in this case, appraisers), one to be named by each party and the third to be selected by the two so named. It further provides that the decision of any two such arbitrators (here, appraisers) shall be "final and conclusive on the parties hereto." In the event that the two arbitrators so designated fail to select a third arbitrator within 15 days after appointment, then either party shall be free to seek the appointment of a third arbitrator in accordance with the laws of the State of California.

16. Section 20.03 of the Ground Lease further states: "Selection of Arbitrator or Appraiser by Beneficiary. Lessor agrees that it will recognize any designation by Lessee . . . to exercise the rights of Lessee with respect to the selection of arbitrators *or appraiser* [emphasis added] in connection with any dispute arising hereunder which it is provided herein is to be determined by arbitration or appraisal pursuant to this Article XX."

17. Respondent has previously recognized Petitioner's right to obtain its own sales data and appraisal to address disputes concerning the establishment of basic rent under Paragraphs 18.03 and 20.02 of the Ground Lease and negotiated in good faith with Petitioner concerning the same. Petitioner was informed by Respondent that on at least one prior occasion, Respondent had participated in arbitration with a predecessor in interest to Petitioner as Lessee to determine the amount of basic rent during a renewal term with such arbitration conducted by the appointment of three appraisers.

18. Section 20.2 "Appraisal" of the Ground Lease further recognizes the role of appraisers to serve as arbitrators and that "appraisal shall be conducted in accordance with the laws of the State of California applicable to arbitration." In accordance therewith on or about September 9, 2020, Petitioner demanded that Respondent submit the

1 controversy to arbitration by way of the appointment of a third appraiser to serve along
2 with the two appraisers already selected by Petitioner and Respondent, as set forth under
3 the terms of the Ground Lease.

4 19. Respondent has, and continues, to refuse to arbitrate the issue of the proper
5 appraised value of the Land which would then be used to determine the amount of the
6 basic rent for the renewal term of the Ground Lease.

7 20. Petitioner has tendered the quarterly rent for the first portion of the renewal
8 term under protest.

9 21. Petitioner has duly appointed Giselle Nguyen, MAI, a California Certified
10 General Appraiser of BGG, Inc. as its appraiser in this matter.

11 22. Respondent has appointed Joseph G. Lucas, MAI, of Manhattan Realty,
12 Inc. as its appraiser in this matter.

13 23. Petitioner seeks relief from this Court to order this matter to arbitration and
14 specifically to order that Ms. Nguyen and Mr. Lucas be allowed to appoint a third appraiser
15 and, should they fail to make such an appointment, for the Court to make the required
16 appointment of a third appraiser so that the appraised value of the Land can be
17 determined in accordance with the arbitration provisions of the Ground Lease.

18 **WHEREFORE, Petitioner Prays As Follows:**

19 1. That the Court order Respondent to arbitrate the controversy as herein
20 alleged under the terms of the Ground Lease and specifically that a panel of three
21 appraisers be appointed, one selected by Petitioner, one selected by Respondent and a
22 third to be selected by the two appraisers so named with the decision of any two such
23 appraisers to be final and conclusive upon the Parties hereto as to the appraised value
24 of the Land;

25 2. In the event that the two appraisers so named are not able to reach an
26 agreement or otherwise designate a third appraiser to serve as an arbitrator, that the
27

1 Court make such appointment in accordance with California law;

2 3. That Petitioner be awarded costs of suit;

3 4. For reasonable attorney's fees as allowed by law or contract;

4 5. For such other and further relief as the Court may deem proper.

5 Dated: October 13, 2020

6 SHERRY ANNE LEAR, Attorney for
7 Petitioner, BORCHARD & REINO
8 PLAZA, A CA General Partnership

EXHIBIT A

GROUND LEASE

TRUSTEES OF GENERAL ELECTRIC
PENSION TRUST

"Lessor"

MARVIN A. POMERANTZ

"Lessee"

Dated as of August 12, 1970.

Leased Premises: Thrifty Drug Store No. 410
161 North Reino Road
Newbury Park (Thousand Oaks)
California

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. - THE LEASED PROPERTY	1
1.01 - The Land	1
1.02 - Title	2
1.03 - Improvements Not Included in Lease	2
ARTICLE II. - TERM	3
2.01 - Interim and Primary Term	3
ARTICLE III. - RENTAL	4
3.01 - Basic Rental for Interim Term	4
3.02 - Basic Rental for Primary Term	4
3.03 - Proration	5
3.04 - Additional Rental	5
3.05 - Place of Payment	6
3.06 - Rental to be Net to Lessor	6
ARTICLE IV. - CONDITION AND USE OF THE LAND	7
4.01 - Condition and Use	7
4.02 - Lessee's Right to Grant Licenses or Easements	8
ARTICLE V. - MAINTENANCE	11
ARTICLE VI. - IMPOSITIONS	12
6.01 - Impositions Defined	12
6.02 - Lessee to Pay Impositions	13
ARTICLE VII. - COMPLIANCE WITH LEGAL AND INSURANCE REQUIREMENTS	14
ARTICLE VIII. - PERMITTED CONTESTS	15
ARTICLE IX. - INSURANCE	17
9.01 - Risks to be Insured	17
9.02 - Policy Provisions	19
9.03 - The Depositary	21
9.04 - Delivery of Policies; Insurance Certificates	21
9.05 - Apportionment of Premiums	21

	<u>Page</u>
ARTICLE X. - CHANGES AND ALTERATIONS	22
ARTICLE XI. - INDEMNIFICATION OF LESSOR: MECHANIC'S LIENS.	22
11.01 - Lessee to Hold Lessor Harmless	22
11.02 - Mechanic's Liens	24
ARTICLE XII. - DAMAGE OR DESTRUCTION	24
12.01 - Partial Destruction	24
12.02 - Total or Substantial Destruction Defined	25
12.03 - Total or Substantial Destruction During Term of Sublease	26
12.04 - Total or Substantial Destruction when Sublease is not in Effect	26
12.05 - Insurance Proceeds	26
ARTICLE XIII. - CONDEMNATION	28
13.01 - Taking Defined	28
13.02 - Total Taking Defined	28
13.03 - Lessor to Give Notice	30
13.04 - Partial Taking: Restoration	30
13.05 - Total Taking While Sublease is in Effect	31
13.06 - Application of Awards in Case of a Total Taking	32
13.07 - Application of Awards Upon Partial Taking	32
13.08 - Reduction of Basic Rent	34
13.09 - Taking for Temporary Use	34
13.10 - Settlement with Condemning Authority	35
ARTICLE XIV. - ASSIGNMENT OR SUBLEASE	35
14.01 - Lessee's Right to Assign	35
14.02 - The Sublease	36
14.03 - Rights of Sublessee	37
14.04 - Assignment by Lessor	39
ARTICLE XV. - ENCUMBRANCE OF THE LEASEHOLD	40
15.01 - Power to Encumber	40
15.02 - Leasehold Encumbrance Indebtedness	40

	<u>Page</u>
15.03 - Notice to Beneficiary	41
15.04 - Forebearance by Lessor of Remedies Upon Default	42
15.05 - Performance on Behalf of Lessee	43
15.06 - New Lease	43
15.07 - Encumbrance by Lessor	44
ARTICLE XVI. - DEFAULT BY LESSEE	44
16.01 - Events of Default	44
16.02 - Lessor's Remedies	46
16.03 - Repossession	47
16.04 - Lessor May Cure Defaults	48
ARTICLE XVII. - PURCHASE OF LESSEE'S OR LESSOR'S INTEREST	48
17.01 - Events Requiring Purchase or Offer to Purchase by Lessee	48
17.02 - Offer by Lessor to Purchase Improvements	50
17.03 - Closing of Purchase of Land or Improvements; Termination of Lease	51
17.04 - Insurance Proceeds and Awards and Payments	53
17.05 - Assignment of Lessee's Rights under the Sublease	54
ARTICLE XVIII. - OPTION TO RENEW LEASE	57
18.01 - Renewal Terms	57
18.02 - Basic Rental for First Renewal Term	58
18.03 - Basic Rental for Second through Seventh Renewal Terms	58
18.04 - Default	59
ARTICLE XIX. - END OF LEASE	59
19.01 - Title to Improvements upon Expira- tion of Lease	59
19.02 -	60
ARTICLE XX - ARBITRATION AND APPRAISERS	61
20.01 - Arbitration	61
20.02 - Appraisal	62
20.03 - Selection of Arbitrator or Appraiser by Beneficiary	63

	<u>Page</u>
ARTICLE XXI. - INSPECTIONS	64
ARTICLE XXII. - ESTOPPEL CERTIFICATES	64
22.01 - Lessee's Estoppel Certificate	64
22.02 - Sublessee's Estoppel Certificates	65
22.03 - Beneficiary's Estoppel Certificate	66
22.04 - Lessor's Estoppel Certificate	66
ARTICLE XXIII. - NOTICES	67
ARTICLE XXIV. - QUIET ENJOYMENT	68
ARTICLE XXV. - MISCELLANEOUS	69
25.01 - Acceptance of Surrender	69
25.02 - No Merger of Title	70
25.03 - Remedies to be Cumulative	70
25.04 - No Waiver of Rights	71
25.05 - Extension of Time for Unavoidable Delays	71
25.06 - Right of Redemption or Re-entry	72
25.07 - Consent Not Unreasonably Withheld	72
25.08 - Divisibility of Lease	72
25.09 - Modification of Lease	72
25.10 - Assigns and Successors	73
25.11 - Article and Section Headings	73
25.12 - Counterparts	73
25.13 - Choice of Laws	73
ARTICLE XXVI. - PARKING, COMMON AREAS, DEED RESTRICTIONS	73
26.01 - Lessee's Rights	73
26.02 - Maintenance and Operations	74
26.03 - Delegation of Rights	75

EXHIBITS

EXHIBIT A The Land Legal Description

EXHIBIT B Plot Plan

EXHIBIT C Permitted Exceptions

~~EXHIBIT D Schedule of Purchase Prices~~ H 11

DEFINITIONS

	<u>Section</u>
Lessor	Preamble
Lessee	Preamble
Land	1.01
Permitted Exceptions	1.02
Improvements	1.03(a)
Lessee's Equipment	1.03(b)
Interim Term	2.01(a)
Primary Term	2.01(b)
Basic Rental	3.01
Additional Rental	3.04
Impositions	6.01
Legal Requirements	7.01(a)
Insurance Requirements	7.01(a)
Depository	9.03
Restoration	12.01 and 13.0
Total or Substantial Destruction	12.02
Taking	13.01
Total Taking	13.02
Sublease	14.02
Sublessee	14.02
Deed of Trust	15.01 and 15.0
Beneficiary	15.01 and 15.0

	<u>Section</u>
Events of Default	16.01
Renewal Terms	18.01

LEASE

THIS GROUND LEASE (hereinafter called "this Lease") is made as of August 12, 1970 between E. H. MALONE, Camel Hollow Road, Huntington, New York, R. W. LEWIS, 761 Forest Avenue, Rye, New York, R. E. PFENNING, 77 North Saddle Brook Drive, Ho-Ho-Kus, New Jersey, VIRGIL B. DAY, 45 Cowdin Lane, Chappaqua, New York, and R. H. JONES, 742 Lake Avenue, Greenwich, Connecticut, as TRUSTEES OF GENERAL ELECTRIC PENSION TRUST, having their offices at 570 Lexington Avenue, New York, New York 10022 (said Trustees of General Electric Pension Trust being herein collectively called "Lessor"), acting under instrument dated August 31, 1946, as amended, and MARVIN A. POMERANTZ having an address at 5 South West 51st Street, Des Moines, Iowa (hereinafter called "Lessee").

ARTICLE I.

THE LEASED PROPERTY

1.01 The Land. Upon and subject to the conditions and limitations set forth below, Lessor hereby leases to Lessee, and Lessee hereby rents from Lessor, for the term specified in Article II, unless this Lease shall sooner

terminate as hereinafter provided, that certain real property (herein called "the Land") described in Exhibit A attached hereto and by this reference incorporated herein. For the convenience of the parties hereto a plot plan of the Land is attached hereto as Exhibit B.

1.02 Title. Lessee represents that the Land and the title thereto has been examined and approved by Lessee and that Lessee hereby accepts the leasehold hereby created subject to those matters described and set forth in Exhibit C attached hereto and by this reference incorporated herein ("the Permitted Exceptions").

1.03 Improvements Not Included in Lease. The following buildings, structures and improvements are not included in this Lease and, except as provided in Articles XVII and XIX, Lessor shall have no right, title or interest therein or thereto:

(a) The buildings, structures and other permanent improvements (hereinafter called the "Improvements") on the Land at the date hereof and hereafter erected thereon (including subsurface structures and foundations but not including storm sewers and area drains);

(b) All building equipment and personal property, now or hereafter on the Land, used in the operation and maintenance thereof or of any building, structure or improvement thereon, whether or not affixed to the realty, including, without limitation, fixtures, machinery, apparatus, fittings, elevators, tools, air conditioning systems and equipment (hereinafter called "Lessee's Equipment"); and

(c) All additions, alterations, restorations, repairs and replacements of any of the foregoing.

ARTICLE II.

TERM

2.01 Interim and Primary Term. Subject to the terms, covenants, agreements and conditions contained herein, Lessee shall have and hold the Land for:

(a) an interim term (herein called the "Interim Term") commencing on the date hereof and ending at midnight on August 31, 1970, and

(b) a primary term (herein called the "Primary Term") commencing on September 1, 1970, and ending at

midnight on August 31, 2000, unless terminated
sooner pursuant to the terms hereof.

Whenever the phrase "Term of this Lease" is used
throughout this Lease, it shall include the Interim Term,
the Primary Term and the renewal terms, if any, which are
provided for in Article XVIII of this Lease.

ARTICLE III.

RENTAL

3.01 Basic Rental for Interim Term. Lessee
agrees to pay, and Lessor agrees to accept, as basic rental
for the land during the Interim Term of this Lease, the
sum of \$6,720 per year payable in advance in quarterly
installments of \$1,680 on the first day of each September,
December, March and June for each and every full calendar
year of the Interim Term of this Lease.

3.02 Basic Rental for Primary Term. Commencing
on September 1, 1970, and continuing thereafter until the
end of the Primary Term of this Lease, Lessee agrees to
pay, and Lessor agrees to accept, as basic rental for the
Land, the sum of \$6,720 per year, payable in advance in
quarterly installments of \$1,680 on the first day of each
September, December, March and June.

3.03 Proration. If the Interim Term of this Lease commences on a day other than the first day of September, December, March or June, Lessee shall, on the first day of the Interim Term of this Lease, pay as rental for the fractional quarter in which the Interim Lease term commences, an amount determined by multiplying the quarterly rental installments by a fraction, the numerator of which shall be the number of days remaining in such quarter including the first day of the Interim Term of this Lease, and the denominator of which shall be 90. The foregoing proration is based on the assumption of a 360-day calendar year.

3.04 Additional Rental. Lessee will also pay from time to time as provided in this Lease, or where no specific time is so provided, on demand of Lessor, as additional rental ("Additional Rental"), (a) all other amounts required to be paid by Lessee under the terms of this Lease, (b) interest at the rate of 9-1/2% per annum on such of the foregoing amounts as are payable to Lessor and are not paid within 10 days of the date so provided in this Lease or of such demand; such interest to accrue from the date so provided or of such demand, until payment thereof; and (c) interest at the rate of 9-1/2% per annum on all overdue installments of basic rental, such interest to accrue from the due date thereof until payment. If Lessee

fails to pay any additional rental required hereunder, Lessor shall have all the rights, powers and remedies provided for in this Lease or at law or in equity or otherwise as Lessor would have in the case of nonpayment of the basic rental.

3.05 Place of Payment. The basic rental, additional rental and other sums payable to Lessor hereunder shall be payable in lawful money of the United States of America to Lessor at First National City Bank, Trust Collection Department, 399 Park Avenue, New York, New York 10022 or to such agent or person or persons or at such other address as Lessor from time to time may designate. The basic rental shall be absolutely net to Lessor so that this Lease shall yield to Lessor the full amount of the installments of basic rental without deduction throughout the Term of This Lease except to the extent otherwise provided in Section 13.08.

3.06 Rental to be Net to Lessor. It is intended that the rent provided for in this Lease shall be absolutely net to Lessor throughout the Term of This Lease, free of any taxes (except as provided in Article 6.01) costs, expenses, liabilities, charges or other deductions whatsoever with respect to the Land or Improvements and/or the ownership,

leasing, operation, maintenance, repair, rebuilding, use or occupation thereof, or with respect to any interest of Lessor therein, it being the intention of the parties hereto that by the execution of this Lease, Lessee shall assume with respect to the Land and Improvements every obligation relating thereto which the ownership thereof entails and which, but for this Lease, would be borne by Lessor.

ARTICLE IV.

CONDITION AND USE OF THE LAND

4.01 Condition and Use. Lessee is fully familiar with the physical condition of the Land and has received the same in good and clean order and condition. Lessor makes no representation or warranty with respect to the condition of the Land or its fitness or availability for any particular use, and Lessor shall not be liable for any latent or patent defect therein. Lessee may use the Land for any lawful purpose and will not do or permit any act or thing which is contrary to any legal requirement or insurance requirement (as those terms are defined in Article VII hereof), or which might impair the value of the Land or any part thereof or which constitutes a public or private nuisance or waste.

4.02 Lessee's Right to Grant Licenses or Easements.

Lessee is hereby authorized and empowered, for and in behalf of Lessor, and as the attorney in fact of Lessor to make, execute, acknowledge and deliver instruments in the form usually used for the purpose in the State of California granting a license or easement, with respect to the Land to any person, and the successors and assigns of such person, provided that the license or easement fulfills the conditions set forth in clauses (vi), (vii) and (viii) of this Section 4.02 and at least one of the conditions set forth in clauses (i) through (v) below:

(i) A license or easement to lay mains, pipes, sewers, gas and electrical conduits along any one of the boundaries of the Land, within a distance of not more than 10 feet measured from the boundary in question and at a depth of not less than 3 feet below the surface;

(ii) A license or easement to locate telephone or electrical supply poles, wires, and supports along any one of the boundaries of the Land, provided that no pole, wire or support shall encroach more than 10 feet upon the Land measured from such boundary;

(iii). A license or easement for one or more of the purposes described in clauses (i) and (ii) where the encroachment upon the Land is to the extent of not more than 20 feet, provided that the grantee shall agree in the license or easement that the grantee will, at the grantee's expense, relocate whatever property or installation is placed or made on the Land pursuant to the license or easement insofar as necessary and whenever required to avoid interference with the construction or alteration of any building or improvement on the Land;

(iv) Any license or easement which is terminable by Lessor or Lessee, their respective successors or assigns, on not more than 90 days' notice;

(v) Any license or easement which by its terms shall come to an end upon the expiration, or any earlier termination of this Lease;

(vi) Any such license or easement shall contain the agreement of the grantee thereof, at such grantee's expense (a) to keep and maintain any property or installation which is placed on the Land in good and

safe repair at all times and in a condition which complies with all legal requirements, (b) to pay and discharge any tax of any name or nature imposed on such property or installation, or the license or easement, (c) to indemnify and hold Lessor and Lessee harmless for and in respect of any claims, liabilities or responsibilities of any name or nature which may be imposed on Lessor or Lessee or upon the Land by reason of the granting of the license or easement, the maintenance of the property or installations thereon or by reason of any other exercise of the license or easement, and shall provide (d) that upon any default by the grantee thereof, such license or easement may be terminated by the tenant or owner of the Land on 30 days' written notice, and (e) that on any termination or the expiration of the license or easement, the grantee will, at the grantee's expense, remove all property and installations and restore and repair any damage or defacement of the Land or the improvements, in default whereof Lessor or Lessee or the tenant or owner of the Land may do so for the grantee's account;

(vii) No such license or easement shall contain any obligation of any kind or nature whatever binding upon Lessor or grantor thereof; and

(viii) Any such license or easement shall recite that the same is made with the consent and approval of Lessee.

Upon the granting of any such license or easement Lessee shall notify Lessor thereof, shall furnish Lessor with a duplicate original of the instrument in question and an opinion from the office of Lessee's counsel to the effect that the license or easement fulfills the conditions of this Section and is enforceable in accordance with its terms and, with respect to any license or easement of the type described in clauses (i), (ii) and (iii) above, the certificate of an authorized representative of Lessee, to the effect that the granting of such license or easement does not substantially impair the value or usefulness of the Land or the Improvements. The right hereby granted to Lessee may be assigned to Sublessee or to any assigns of Lessee's interest hereunder.

ARTICLE V.

MAINTENANCE

5.01. Lessee at its expense will keep the Land, the Improvements and the adjoining sidewalks, curbs and ways in good and clean order and condition.

ARTICLE VI.

IMPOSITIONS

6.01 Impositions Defined. As used herein, "Impositions" shall mean all taxes, assessments (including but not limited to all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the term hereof), ground rents, water, sewer or other rents, rates and charges, excises, levies, license fees, permit fees, inspection fees and other authorization fees and other charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character (including all interest and penalties thereon), which at any time during or in respect of the term hereof may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon (i) the Land or the Improvements or any part thereof or any rent therefrom or any estate, right or interest therein, or (ii) any occupancy, use or possession of or activity conducted on or in the Land or the Improvements or any part thereof.

The term "Impositions" shall include but not be limited to franchise taxes, capital stock taxes or other

assessments, levies, impositions or charges of Lessor or any successor to or assignee of the interest of Lessor or any successor to or assignee of the interest of Lessor under this Lease or of any successor owner of the Land or the improvements, to the extent that the same are measured or based in whole or in part on the Land or the Improvements or any estate, right or interest therein or under this Lease or on the value of any thereof, or on the basic rent, additional rent or other sums payable hereunder.

However, the term "Impositions" shall not include any income or excess profits tax of Lessor, determined on the basis of its general net income or net revenue and excluding any estate, inheritance or succession taxes imposed upon the estate of any successor or assignee of Lessor.

6.02 Lessee to Pay Impositions. Subject to Article VIII of this Lease relating to contests, Lessee will pay all taxes and assessments and other Impositions of every kind and nature levied upon the Land or Improvements before any fine, penalty, interest or cost may be added for nonpayment thereof, and will furnish to Lessor, upon request, official receipts or other satisfactory proof evidencing such payment. If any assessment may be paid in installments, Lessee may pay it in installments as they

respectively become due. Unless Lessee is in default hereunder, upon the expiration of the term hereof, all impositions provided to be paid by Lessee hereunder, accrued or prepaid, as the case may be, shall be apportioned between Lessor and Lessee.

ARTICLE VII.

COMPLIANCE WITH LEGAL AND
INSURANCE REQUIREMENTS

7.01 Subject to Article VIII of this Lease, Lessee covenants that, at its expense, it will promptly:

(a) comply with all laws, orders, judgments, injunctions, rules, regulations, permits, licenses, and requirements of all federal, state or municipal departments, commissions, boards, courts, authorities, agencies, foreseen or unforeseen, ordinary or extraordinary (herein called "Legal Requirements") which now or at any time hereafter may be applicable to the Land and the Improvements or any part thereof, or any of the adjoining sidewalks, streets or ways, or any use or condition of the Land or Improvements or any part thereof, and with all terms of any insurance

policy required to be carried by Lessee under this Lease and all requirements of the issuer of any such policy (herein called "Insurance Requirements") whether or not compliance with such legal or insurance requirements shall require structural changes in the Improvements or interfere with the use and enjoyment of the Land or any part thereof;

(b) procure, maintain and comply with all permits, licenses and other authorizations required for any use of the Land or the Improvements or any part thereof then being made, and for the proper erection, installation, operation and maintenance of the Improvements or any part thereof;

(c) comply with instruments of record at the time in force affecting the Land or the Improvements (other than instruments hereafter placed on record to which neither Lessee nor any assignee or Sublessee of Lessee is a party or has consented.)

ARTICLE VIII.

PERMITTED CONTESTS

8.01 Lessee, at its expense, in the name of

Lessor if legally required, may contest (in the case of any item of importance, after prior written notice to Lessor), by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any imposition or lien therefor or any legal requirement or the application of any instrument of record referred to in Article VII, and may defer compliance therewith pending such contest, provided that (a) in the case of an unpaid imposition or lien therefor, such proceedings shall suspend the collection thereof from Lessor and the Land; (b) neither the Land nor any part thereof or interest therein would be in danger of being forfeited or lost; (c) in the case of a legal requirement, Lessor would not be in danger of any criminal liability; and (d) Lessee shall have furnished such security, if any, as may be required in the proceedings or reasonably requested by Lessor. Lessor shall not request security from Fidelity Union Trust Company, nor from its nominee provided Lessor is indemnified against loss by reason of a contest by such nominee, if either of such parties shall ever be the lessee hereunder, as the result of the enforcement of its rights pursuant to the Trust Indenture mentioned in Section 15.02 hereof. Any refund with respect to any tax or assessment paid by Lessee shall be paid to and be the property of Lessee. Lessor, without expense to it, shall cooperate

with Lessee and execute any documents or pleadings required for any such contest, provided that any such cooperation or execution shall not impose any obligation on Lessor.

ARTICLE IX.

INSURANCE

9.01 Risks to be Insured. So long as the Sublease mentioned in Section 14.02 hereof shall be in effect, Lessee will, at its expense, maintain, or will cause the Sublessee of said Sublease to maintain:

(a) Insurance with respect to the Improvements against loss or damage by fire, lightning, and other risks from time to time included under policies having extended coverage endorsement, in amounts sufficient to prevent either Lessor, Lessee, the Beneficiary mentioned in Section 15.01 hereof or the Sublessee from becoming a co-insurer of any partial loss under the applicable policies, but in any event in amounts not less than 100% of the then full insurable value (herein defined as actual replacement value less actual physical depreciation) of the Improvements (said value shall be determined from time to time at the request of Lessor and at Lessee's expense by the insurer or

insurers or by an expert approved by Lessor);

(b) General public liability insurance against claims for bodily injury, death or property damage, occurring on, in or about the Land and the adjoining streets, sidewalks and passageways, such insurance to afford protection to Lessor of not less than \$500,000, with respect to bodily injury or death to any one person, not less than \$1,000,000, with respect to any one accident and not less than \$500,000, with respect to damage to the property of others;

(c) Explosion insurance in respect of any steam and pressure boilers and similar apparatus located on the Land and the Improvements in amounts approved by Lessor;

(d) War risk insurance when and to the extent obtainable from the United States Government or any agency thereof; and

(e) Appropriate workmen's compensation insurance with respect to any work on or about the Land or the Improvements.

Such insurance may be obtained by the Sublessee by endorsement on its blanket insurance policies, provided that such blanket policies satisfy the requirements specified above in this Section. The Sublessee may either carry all or any part of such insurance (i) under any plan of self-insurance which it may from time to time have in force and effect provided that prior to the implementation thereof, it furnishes to Lessor satisfactory evidence of the existence of an insurance reserve adequate for the risks covered by such plan of self-insurance and Lessor acknowledges the adequacy thereof in writing, or (ii) under a "blanket" policy or policies covering other liabilities of the Sublessee and its subsidiaries, controlling or affiliated corporations, or (iii) partly under such a plan of self-insurance and partly under such "blanket" policies.

If the Sublease is no longer in effect, the insurers shall be reasonably satisfactory to Lessor and Lessee shall provide such additional insurance with respect to the Land and the Improvements in such amounts and against such hazards as Lessor may from time to time reasonably require and as is usually carried by others operating similar businesses and properties in the same general locality.

9.02 Policy Provisions. All insurance maintained by Lessee or the Sublessee pursuant to Section 9.01 above shall:

(a) Except for workmen's compensation insurance, name Lessor, Lessee, the Beneficiary and the Sublessee as insured, as their respective interests may appear;

(b) Provide that all insurance proceeds for losses of less than \$30,000 shall be adjusted by and, except in the case of public liability and workmen's compensation insurance, be payable to Lessee or as it may direct and that all insurance proceeds for losses of \$30,000 or more, except for public liability and workmen's compensation insurance (which shall be adjusted by Lessee), shall be adjusted by Lessee or as it may direct, subject to the approval of Lessor in

the event the Sublease is not then in effect, and shall, except in the case of public liability and workmen's compensation insurance, be payable to the Lessor or, if the Deed of Trust is then in effect, to the Trustee thereunder.

(c) Include effective waivers by the insurer of all claims for insurance premiums against Lessor and, to the extent obtainable, all rights of subrogation against any named insured;

(d) Provide that any losses shall be payable notwithstanding (i) any act or negligence of Lessor, Lessee, the Beneficiary or the Sublessee, (ii) the occupation or use of the Land for purposes more hazardous than permitted by the terms of the policy, (iii) any foreclosure or other proceedings or notices of sale relating to the Land or any part thereof, or (iv) any change in the title or ownership of the Land or any part thereof; and

(e) Provide that no cancellation thereof shall be effective until at least 10 days after receipt by Lessor of written notice thereof.

9.03 The Depositary. Notwithstanding the provisions of the preceding Section 9.02, at any time when neither the Sublease nor a Deed of Trust is in effect, all insurance maintained by Lessee pursuant to Section 9.01 of this Lease the proceeds of which would otherwise be required to be payable to Lessee pursuant to Section 9.02 may, at the election of Lessor, be made payable to a bank or trust company in the City of New York or the State of California, selected by Lessor, with a capital and surplus of not less than \$50,000,000 willing to act hereunder as a depositary of insurance proceeds (the "Depositary").

9.04 Delivery of Policies; Insurance Certificates. Lessee will deliver promptly certificates of the insurance policies which Lessee is required to maintain pursuant to Section 9.01 to Lessor, together with evidence as to the payment of all premiums then due thereon, and will, upon written request by Lessor, deliver to Lessor the originals of such policies.

9.05 Apportionment of Premiums. Unless Lessee is in default hereunder, upon any expiration of the term hereof, the unearned premiums upon any insurance required hereunder then in effect shall be apportioned between Lessor and Lessee.

ARTICLE X.

CHANGES AND ALTERATIONS

10.01 Lessee at its expense may make reasonable alterations of and additions to the Improvements or any part thereof, and Lessee may make substitutions and replacements for the same on the Land, provided that (a) the market value of the Improvements thereafter shall not be below their value immediately before such alteration or addition, (b) such alterations or additions shall be performed in a good and workmanlike manner and, if the estimated cost thereof exceeds \$50,000, under the supervision of a qualified architect or engineer, and (c) such additions, alterations, substitutions and replacements shall be expeditiously completed in compliance with all laws, ordinances, orders, rules, regulations and requirements applicable thereto. If the Sublease shall not be in effect, any such alteration or addition the estimated cost of which exceeds \$250,000, shall require the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed.

ARTICLE XI.

INDEMNIFICATION OF LESSOR: MECHANIC'S LIENS

11.01 Lessee to Hold Lessor Harmless. Lessee

will protect, indemnify and save harmless Lessor from and against all liabilities, obligations, claims, demands, judgments, damages, penalties, causes of action, costs and expenses (including but not limited to reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against Lessor by others by reason of (a) Lessor's ownership of the Land or any interest therein, or receipt of any rent or other sums therefrom; (b) any accident, injury to or death of persons or loss of or damage to property occurring on or about the Land or the Improvements or any part thereof or the adjoining sidewalks, curbs, streets or ways; (c) any use, nonuse or condition of the Land or the Improvements or any part thereof or the adjoining sidewalks, curbs, streets or ways; (d) any failure on the part of Lessee to perform or comply with any of the terms of this Lease, and of any contracts and agreements to which Lessee is a party and of any restrictions, statutes, laws, ordinances or regulations affecting the Land or any part thereof or of the ownership or occupancy or use thereof; or (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Land or the Improvements or any part thereof. In case any action, suit or proceeding is brought against Lessor by reason of any such occurrence, Lessee, upon Lessor's request, will at Lessee's expense resist and defend such

action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Lessee and approved by Lessor. However, Lessee shall not be obligated to protect, indemnify or save Lessor harmless from and against or to resist or defend any action, suit or proceeding brought against Lessor for any franchise, excise, corporate, estate inheritance, succession or capital levy tax of Lessor or any income, profits or revenue tax upon the income of Lessor, except to the extent that the same shall constitute Impositions as defined in Section 6.01 hereof.

11.02 Mechanic's Liens. If any mechanic's lien shall be filed against the Land, Lessee, at its expense, shall cause it to be cancelled or discharged of record, by bonding, deposit or otherwise.

ARTICLE XII.

DAMAGE OR DESTRUCTION

12.01 Partial Destruction. In case of damage to or destruction of any of the Improvements which is less than total or substantial destruction, Lessee will, or will cause the Sublessee to, at Lessee's or the Sublessee's expense, promptly commence and proceed with reasonable diligence to effect (subject to unavoidable delays) the

restoration, replacement or rebuilding of the Improvements as nearly as possible to their value, condition and character immediately prior to such damage or destruction, whether or not the insurance proceeds, if any, on account of such damage or destruction shall be sufficient for the purpose, with such changes or alterations as may be made at Lessee's or the Sublessee's election pursuant to and subject to the conditions of Article X of this Lease (such restoration, replacement or rebuilding of the Improvements, changes and alterations, together with any temporary repairs and property protection pending completion of the work, being herein called "Restoration").

12.02 Total or Substantial Destruction Defined.

Total or Substantial Destruction is damage or destruction of the Improvements of such magnitude that the Lessee shall, in good faith, reasonably determine that restoration of the Improvements is economically unfeasible. In the event Lessor disagrees with any determination as to economic infeasibility, such determination shall be subject to arbitration in the manner provided in Section 13.02 hereof unless the Sublessee shall have terminated the Sublease pursuant to the provisions of Section 7.02 thereof.

12.03 Total or Substantial Destruction During Term of Sublease. In the event of a total or substantial destruction during the term of the Sublease the Sublessee, pursuant to Section 7.02 of the Sublease, shall have the right to restore the Improvements or terminate the Sublease. In the event that the Sublessee shall elect to terminate the Sublease, Article XVII of this Lease shall be applicable.

12.04 Total or Substantial Destruction when Sublease is not in Effect. If the Sublease is not in effect at the time of a total or substantial destruction of the Improvements, Lessee will give written notice to Lessor of the termination of this Lease on any date occurring not less than 60 days after the giving of such notice nor more than 150 days after such total destruction, and on such termination date this Lease shall terminate. Upon such termination, the basic rent and additional rent shall be apportioned by Lessor and Lessee to the termination date, and all insurance proceeds received or payable on account of such total or substantial destruction shall be paid over or assigned to Lessor or as it may direct.

12.05 Insurance Proceeds. All insurance proceeds actually received by or payable to a Depositary or to Lessor on account of any damage to or destruction of the

Improvements or any part thereof other than a total or substantial destruction which results in a termination of this Lease (less the actual costs, fees, and expenses incurred in the collection thereof) shall, unless Lessee is in default hereunder, be paid over to Lessee or as it may direct from time to time as restoration progresses to pay (or reimburse Lessee or Sublessee for) the cost of restoration, but only upon the written request of Lessee accompanied by evidence satisfactory to Lessor that the sum requested has been paid or is then due and payable and is a proper item of such cost. During the term of the Sublease such proceeds may be paid directly to the Sublessee pursuant to and in accordance with the terms of Section 7.03 of the Sublease. Upon receipt by Lessor of evidence satisfactory to it that restoration has been completed and the cost thereof paid in full and that there are no mechanics' or similar liens for labor or materials supplied in connection therewith, the balance, if any, of such proceeds shall, unless Lessee is in default hereunder, be paid over or assigned to Lessee or as it may direct.

All insurance proceeds received as a result of a total or substantial destruction which results in a termination of this Lease shall be paid to Lessor unless the Leased Premises are purchased by the Sublessee or the Lessee,

in which case said proceeds shall be paid to such purchaser.

ARTICLE XIII.

CONDEMNATION

13.01 Taking Defined. As used herein, a "taking" means any acquisition of any portion of the Land or Improvements or any interest therein or right accruing thereto pursuant to or in anticipation of the power of condemnation or eminent domain or by reason of the temporary requisition of the use or occupancy of the Land or the Improvements by any governmental authority, civil or military.

13.02 Total Taking Defined. As used herein a total taking means a taking of so much of the Land or Improvements that (while the sublease is in effect) the sublessee would be entitled to terminate the sublease pursuant to Section 8.02 of the sublease. If the sublease is not in effect then a total taking shall mean either (a) a taking of all of the Land, other than for a temporary purpose or (b) a taking of so much of the physical area of the Land, the result of which taking is that the remaining portion of the Land cannot economically and feasibly be used by Lessee.

In the event of such a taking of the physical area of the Land when the Sublease is not in effect, Lessee may give written notice to Lessor not more than 60 days after such taking that it has determined that the remaining portion of the Land after restoration cannot economically and feasibly be used by Lessee. Lessor, not more than 120 days after the date of such taking, shall give written notice to Lessee whether or not it agrees with such determination. If Lessor does not agree with such determination within such period of 120 days, the matter shall be determined by arbitration within a reasonable time thereafter in accordance with the terms of Section 20.01 of this Lease. In arriving at their decision, the arbitrators, among other things, shall take into consideration the cost of restoration, the rentable area of the remaining improvements, the then economic condition of the real estate market, the availability of space lessees, the character of the neighborhood, the cost of operating and maintaining the remaining Land and Improvements and whether the remaining Land and Improvements will produce a fair and reasonable return to Lessee. If Lessor shall have given written notice to Lessee that it agrees with Lessee's determination, or if it shall have been determined by arbitration that the remaining Land cannot economically and feasibly be used by Lessee, this Lease shall terminate on such date, not more than 45 days after such notice or such determination, as

shall be designated by Lessee by notice given to Lessor not less than 10 days prior to the termination date. Upon any termination pursuant to this Section, the basic rental and additional rental shall be apportioned by Lessor and Lessee to the date of termination.

13.03 Lessor to Give Notice. In case of a taking of all or any part of the Land or Improvements or the commencement of any proceeding or negotiations which might result in any such taking, Lessee will promptly give, or cause the Sublessee to give, written notice to Lessor, generally describing the nature and extent of such taking or the nature of such proceedings or negotiations and the nature and extent of the taking which might result therefrom, as the case may be. Lessee will pay or cause the Sublessee to pay all costs, fees and expenses, including but not limited to attorneys' fees, reasonably incurred by Lessor in connection with any taking and seeking and obtaining any award or payment on account thereof.

13.04 Partial Taking: Restoration. In case of a taking of the Land other than a total taking, Lessee will, or will cause the Sublessee to, whether or not the awards or payments, if any, on account of such taking shall be sufficient for the purpose, at Lessee's or the Sublessee's

expense, promptly commence and proceed with reasonable diligence to effect (subject to unavoidable delays) the restoration, replacement or rebuilding of the Improvements on the remaining portion of the Land as nearly as possible to their value, condition and character immediately prior to such taking, except for any reduction in area caused thereby, or with such changes or alterations as may be made at the election of Lessee or the Sublessee, in accordance with Article X of this Lease (such restoration, replacement, rebuilding and changes and alterations pursuant to Article X, and related work, being herein called "Restoration"), provided that in case of a taking for temporary use Lessee shall not be required to effect or cause the Sublessee to effect restoration until such taking is terminated.

13.05 Total Taking While Sublease is in Effect.

In the event that, as a result of a total taking, the sublessee shall give notice of the termination of the sublease pursuant to Section 8.02 thereof, Lessee shall make an irrevocable offer to purchase Lessor's interest in the Land pursuant to Section 17.01 of this Lease. Whether said offer shall be accepted or not, this Lease shall terminate on the date of the termination of the Sublease if Lessee shall have complied with all of the provisions of Section 17.01 of this Lease.

13.06 Application of Awards in Case of a Total Taking. All awards and payments on account of any total taking (including all amounts thereof in respect of both the Land and the Improvements) shall be payable in the following order of priority:

(a) The Lessor shall receive the greater of
(i) the purchase price paid by Lessor for the Land,
or (ii) the appraised value of the Land, together,
in each case, with its reasonable expenses incurred
as a result of such taking;

(b) The remainder of the award or payment
shall be paid to the Beneficiary if there is a
Beneficiary in effect, and otherwise to the Lessee.

13.07 Application of Awards Upon Partial Taking.
All awards and payments on account of a partial taking,
including all amounts thereof in respect of both the Land
and the Improvements, shall be payable in the following
order of priority:

(a) Lessor, Lessee, the Beneficiary, if any,
and (if the Sublease is in effect at the time of such

total taking) the Sublessee first shall be entitled to their expenses and charges, including but not limited to reasonable attorneys' fees in connection with the taking.

(b) The entire balance (less any fees and expenses of appraisers whose services are used as provided below) shall be divided in proportion to the respective values of the portion of the Land which is the subject of the taking as if vacant and unimproved and without this Lease, and of the portion of the Improvements which is the subject of the taking as if without this Lease. If Lessor and Lessee are unable to agree upon such respective values, they shall be determined by appraisers within a reasonable time in accordance with the terms of Article 20.02, and the appraisers' fees and expenses shall be deducted from the balance of the awards and payments prior to any further application thereof.

(c) The amount attributable to the portion of the Land which is the subject of the taking shall be paid over to Lessor.

(d) The amount attributable to the portion of the Improvements which is the subject of the taking

shall, subject to the provisions of the Deed of Trust and the Sublease, if any, with respect thereto, be paid over to Lessee.

13.08 Reduction of Basic Rent. Upon the payment to Lessor of any awards and payments on account of a taking required by Section 13.07 to be paid over to Lessor, each installment of basic rental thereafter payable shall be reduced in the same proportion as the value of the Land immediately prior to such taking shall have been reduced by such taking, as if the Land before and after such taking were vacant and unimproved and without this Lease. If Lessor and Lessee are unable to agree on such proportion, it shall be determined by appraisers within a reasonable time in accordance with the terms of Section 20.02, the appraisers' fees and expenses to be borne in equal amounts by the parties hereto.

13.09 Taking for Temporary Use. In the event of a taking of all or any portion of the Land for temporary use, this Lease shall continue in full force and effect without reduction or abatement of basic rental and additional rental and Lessee, subject to the provisions of the Sublease and the Deed of Trust, if any, with respect thereto, shall be entitled, after paying the reasonable

expenses of Lessor, Lessee, the Trustee and the Sublessee incurred in collecting the same, to make claim for, recover and retain any awards or proceeds made on account thereof, whether in the form of rental or otherwise, unless such period of temporary use or occupancy shall extend beyond the term of this Lease, in which case such awards or proceeds, after deducting the cost of restoration of the Improvements and the payment thereof to Lessor, shall be apportioned between Lessor and Lessee as of such date of expiration of the term of this Lease.

13.10 Settlement with Condemning Authority.

Without the written consent of the other party hereto (which shall not be unreasonably withheld or delayed), neither Lessor nor Lessee shall make any settlement with the condemning authority in respect of any taking or consent to any taking.

ARTICLE XIV.

ASSIGNMENT OR SUBLEASE

14.01 Lessee's Right to Assign. Without the consent of Lessor, Lessee shall have the right to assign this Lease and sublet the Land in whole or in part, without limitation, and upon such terms as Lessee in its sole

discretion shall deem appropriate or suitable, provided that no such assignment shall be made prior to the execution by Lessee's Assignee and the delivery to Lessor of a legally effective instrument, assuming (but only to the extent that such assumption does not subject the Assignee to any claim for damages or other monetary relief hereunder) all the obligations of Lessee under this Lease. No assignment or sublease by Lessee pursuant to this Section 14.01 shall affect or reduce any of the obligations of Lessee hereunder, but this Lease and all the obligations of Lessee hereunder shall continue in full force and effect as the obligations of a principal and not as the obligations of a guarantor or surety.

14.02 The Sublease. Simultaneously with the execution and delivery of this Lease, Lessee and Thrifty Drug Stores Co. Inc., a California corporation (Thrifty Drug Stores Co. Inc., its assigns and successors are hereinafter referred to as the "Sublessee") are entering into a lease, dated as of the same date as this Lease, by which Lessee will sublease the Land and lease the Improvements to the Sublessee (such lease, as the same may be amended or supplemented from time to time as permitted by this Lease, is herein called the "Sublease"). Lessee will not agree or consent to any amendment or modification of the

Sublease (other than an amendment entered into in conformity with the Deed of Trust described in Section 15.01) and will not give any consent under the Sublease which substantially changes the obligations of the Sublessee thereunder, without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed, provided that Lessee without the consent of Lessor may exercise any claim, right, power, privilege or remedy which it may have as the lessor under the Sublease, whether arising under the Sublease or by statute or at law or in equity or otherwise. Neither Lessee nor any affiliate of Lessee will acquire the interest of the Sublessee under the Sublease, and Lessee will not, directly or indirectly, dispose of its interest hereunder to the Sublessee or any affiliate of the Sublessee without the prior written consent of Lessor.

14.03 Rights of Sublessee. So long as the Sublease shall be in effect, Lessor and Lessee agree as follows:

(a) Lessor hereby consents to said Sublease and recognizes Sublessee's tenancy thereunder.

(b) Lessor and Lessee shall not agree between themselves to any cancellation, surrender or modification of this Lease (except to reduce the basic rent

payable hereunder) without the prior written consent of the Sublessee.

(c) Lessor will give to the Sublessee a copy of any notice or other communication from Lessor to Lessee having reference to Lessee's performance hereunder at the time of giving such notice or communication to Lessee, and Lessor will not exercise any right, power or remedy with respect to any default hereunder and no notice to Lessee of any such default and no termination of this Lease in connection therewith shall be effective, unless Lessor shall have given to the Sublessee written notice or a copy of its notice to Lessee of such default or any such termination, as the case may be.

(d) Lessor will not exercise any right, power or remedy with respect to any event of default hereunder until the expiration of any grace period provided with respect thereto, plus an additional period of 30 days after the expiration thereof or after Lessor has given to the Sublessee written notice of such default or a copy of its notice to the Lessee of such default, whichever is later, and Lessor will not exercise any right, power or remedy with respect to any default

hereunder if (i) the Sublessee within such 30-day period shall give to Lessor written notice that it intends to undertake the correction of such default or to cause the same to be corrected, and (ii) the Sublessee shall thereafter prosecute diligently the correction of such default.

(e) the Sublessee may make any payment or perform any act required hereunder to be made or performed by Lessee with the same effect as if made or performed by Lessee.

(f) The provisions of this Article XIV are made for the benefit of Sublessee and Sublessee shall have full rights to enforce said provisions as if it were a signatory party hereto.

14.04 Assignment by Lessor. To the extent this Lease imposes any obligations upon Lessor such obligations shall be binding and enforceable only against the person who is then the owner of the Land and the responsibility for the performance of any such covenants shall not survive a conveyance of the Land.

ARTICLE XV.

ENCUMBRANCE OF THE LEASEHOLD

15.01 Power to Encumber. Lessee, without Lessor's consent, may encumber the leasehold estate created by this Lease under a leasehold mortgage and/or deed of trust at any time and from time to time, without limitation as to amount and on any terms Lessee may deem desirable and in connection therewith may assign the leasehold estate to the holder or trustee of such mortgage and/or deed of trust. Any such mortgage and/or deed of trust at the time in effect (or if more than one such mortgage and/or deed of trust shall at the time be in effect, that which is prior in lien) is herein called the "Deed of Trust," and the Beneficiary or any assignee or pledgee of the beneficial interest under a Deed of Trust is herein called the "Beneficiary."

Lessor and Lessee shall not agree between themselves to any cancellation, surrender or modification of this Lease without the prior written consent of the Beneficiary, except to reduce the Basic Rental payable hereunder.

15.02 Leasehold Encumbrance Indebtedness. Simultaneously with or immediately after the delivery of this

Lease and to secure payment of certain indebtedness, Lessee will convey its leasehold estate hereunder and the Improvements to Title Insurance and Trust Company, as trustee, for Driftwood Properties, Inc., as beneficiary, under a deed of trust, dated or to be dated as of the same date as of this Lease, thereby constituting said deed of trust as the "Deed of Trust." Thereupon, or thereafter, Driftwood Properties, Inc. will assign the aforesaid deed of trust together with the note secured thereby to Fidelity Union Trust Company, trustee under a Trust Indenture between Driftwood Properties, Inc. and Fidelity Union Trust Company. So long as said deed of trust shall be assigned to Fidelity Union Trust Company pursuant to said Trust Indenture, the term "Beneficiary" as used in this Lease shall mean Fidelity Union Trust Company, unless the context of this Lease clearly indicates otherwise.

15.03 Notice to Beneficiary. Lessor will give to the Beneficiary a copy of any notice or other communication from Lessor to Lessee hereunder at the time of giving such notice or communication to Lessee and notice of any rejection of this Lease by a trustee in bankruptcy of Lessee. Lessor will not exercise any right, power or remedy with respect to any default hereunder and no notice to Lessee of any such default and no termination of this Lease in

connection therewith shall be effective, unless Lessor shall have given to the Beneficiary written notice or a copy of its notice to Lessee of such default or any such termination, as the case may be.

15.04 Forebearance by Lessor of Remedies Upon Default. Lessor will not exercise any right, power or remedy with respect to any event of default (as that term is defined in Section 16.01 of this Lease) hereunder until the expiration of any grace period provided with respect thereto, plus an additional period of 30 days after the expiration thereof or after Lessor has given to the Beneficiary written notice of such default or a copy of its notice to Lessee of such default, whichever is later. Lessor will not exercise any right, power or remedy with respect to any default hereunder (other than a default constituting an event of default under Section 16.01(a) of this Lease if (a) the Beneficiary within such 30-day period shall give to Lessor written notice that it intends to undertake the correction of such default or to cause the same to be corrected, and (b) the Beneficiary shall thereafter prosecute diligently the correction of such default, whether by exercise on behalf of Lessee of its obligations hereunder, entry on the Leased Premises, foreclosure, sale or otherwise.

15.05 Performance on Behalf of Lessee. The Beneficiary may make any payment or perform any act required hereunder to be made or performed by Lessee with the same effect as if made or performed by Lessee (after notice to Lessor), provided that no entry by the Beneficiary upon the Land for such purpose shall constitute or be deemed to be an eviction of Lessee or release Lessee from any obligation or default which shall have been fully performed or corrected by such payment or performance by the Beneficiary.

15.06 New Lease. In case this Lease is terminated for any reason (other than the occurrence of a default constituting an event of default under Section 16.01(a) of this Lease) while a Deed of Trust shall be in effect, Lessor upon receipt within 30 days after such termination of a written request therefor and upon payment of all expenses incident thereto, will execute and deliver a new lease to the Beneficiary or its nominee, for the remainder of the term of this Lease, with the same terms as are contained hereunder (excluding Article XVIII relating to renewal terms), and will convey the Improvement: to the Beneficiary by quitclaim deed conveying such title thereto as Lessor may acquire upon the termination of this Lease free and clear of any deed of trust, lien, encumbrance or charge created by Lessor

provided that (i) Lessor shall have been paid all accrued and unpaid basic rent and additional rent (including amounts thereof which would have been payable if this Lease had not been so terminated), and (ii) the Beneficiary shall have undertaken in writing to cure any default under such new lease which is susceptible of being cured by it. Such new lease and the leasehold estate created thereby shall, to the extent permitted by law, continue to enjoy and maintain the same priority as this Lease with regard to any deed of trust on the Land or any part thereof, or any other lien, charge or encumbrance placed thereon by Lessor or by any persons claiming by, through or under Lessor. In case such a new lease is so entered into, Lessor at the request and expense of the Beneficiary will join in all appropriate steps to cancel and discharge this Lease of record and remove the prior Lessee from the Land.

ARTICLE XVI.

DEFAULT BY LESSEE

16.01 Events of Default. The following shall

constitute "Events of Default" under the terms of this Lease:

(a) Lessee shall fail to pay any basic rental, additional rental or other sum payable hereunder by Lessee to Lessor when and as the same become due and payable and such failure shall continue for 15 days;

(b) Lessee shall fail to perform or comply with any term of Articles VI, IX or XI of this Lease and such failure shall continue for more than 40 days after Lessee received notice (regardless of the source of such notice) or knowledge of such failure;

(c) The Improvements shall be abandoned or unattended for 90 days.

(d) Any petition shall be filed against Lessee in any court, whether or not pursuant to any statute of the United States or of any State, in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings, and Lessee shall thereafter be adjudicated bankrupt, or if such proceedings shall not be dismissed within 60 days after the institution of the same; or if any such

petition shall be so filed by Lessee; or liquidator;
or

(e) Lessee shall fail to perform or comply with any other term hereof and such failure shall continue for more than 40 days after notice thereof by Lessor to Lessee or where such default cannot be cured within such 40 day period, if Lessee, within such period, shall not have commenced with due diligence and dispatch the curing of such default, and thereafter shall fail or neglect to prosecute and complete with due diligence and dispatch the curing of such default.

16.02 Lessor's Remedies. In the event of such default (regardless of the pendency of any proceeding which has or might have the effect of preventing Lessee from complying with the terms of this Lease), Lessor at any time thereafter, subject to sections 14.03 and 15.04, may give a written termination notice to Lessee specifying a date not less than 10 days from the date of giving such notice on which this Lease shall terminate and specifying the Event of Default which is the basis of such notice, and on such date, the term of this Lease shall expire and terminate by limitation and all rights of Lessee under this Lease shall cease, unless before such date (1) all

arrears of basic rental, additional rental and all other sums payable by Lessee under this Lease, together with interest thereon at the rate of 9-1/2% per annum, and all costs and expenses (including but not limited to attorneys' fees and expenses) incurred by or on behalf of Lessor as a result of such default, shall have been paid by Lessee, and (ii) all of the specified Events of Defaults shall have been fully remedied, or, in the case of any default which cannot with due diligence be cured by such date, Lessee shall have commenced, and shall be duly and diligently prosecuting, the full and complete cure thereof. All costs and expenses incurred by or on behalf of Lessor (including but not limited to reasonable attorneys' fees and expenses) occasioned by any default by Lessee under this Lease shall constitute additional rental hereunder. No expiration or termination of this Lease, and no repossession of the Land, or any part thereof, shall relieve Lessee of its liabilities and obligations then accrued under this Lease, all of which shall survive such expiration, termination or repossession.

16.03 Repossession. Subject to Sections 14.03 and 15.04 of this Lease, if an Event of Default shall have occurred and be continuing, Lessor, whether or not the term of this Lease shall have been terminated pursuant

to Section 16.02, may, upon 10 days' written notice, enter upon and repossess the Land or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Lessee and all other persons and any and all property therefrom. Lessor shall be under no liability for or by reason of any such entry, repossession or removal.

16.04 Lessor May Cure Defaults. If an Event of Default shall have occurred, or if an emergency exists, Lessor may do whatever is necessary to cure such default for the account and at the expense (including but not limited to attorneys' fees and expenses) of Lessee. The amount of any payment made or expense incurred by Lessor for such purpose, with interest thereon at the rate of 9-1/2% per annum, shall be deemed additional rental and, forthwith, shall be paid by Lessee to Lessor.

ARTICLE XVII.

PURCHASE OF LESSEE'S OR LESSOR'S INTEREST

17.01 Events Requiring Purchase or Offer to Purchase by Lessee. In the event that Lessee shall receive from the Sublessee notice of termination of the Sublease and shall therewith receive from Sublessee an irrevocable

offer to purchase the Land and the Improvements pursuant to (i) Sections 2.03, 7.02 or 8.02 of the Sublease then in such case Lessee, within 10 days after receipt from Sublessee of such notice of termination and such offer to purchase, shall notify Lessor thereof and shall make an irrevocable offer to purchase the Land from Lessor on the proposed termination date specified in the Sublessee's notice, at a purchase price equal to the amount specified in Exhibit D of the Sublease as the purchase price for the Land (but not the Improvements).

Said purchase price shall be reduced by the aggregate amount of any awards or payments which Lessor shall have theretofore received pursuant to Article XIII of this Lease. If Lessor shall not have rejected any such offer within 20 days after the making of such offer, such offer shall be deemed to have been accepted and Lessor will sell the Land to Lessee. Lessee will deliver to Lessor copies of any certificate or other evidence received by Lessee from the Sublessee evidencing the happening of any contingency enabling the Sublessee to terminate the Sublease. Lessee shall accept the offer of the Sublessee to purchase the Land and the Improvements unless either (a) Lessor shall have rejected Lessee's offer to purchase the Land or (b) Lessee shall have deposited the full amount of the purchase

price of the Land with Lessor as security for the payment of such purchase price if Lessee's offer is accepted.

17.02 Offer by Lessor to Purchase Improvements.

In the event that Lessor shall reject any offer to purchase made by Lessee pursuant to Section 17.01, Lessor will at the time of such rejection (a) make an irrevocable offer to purchase the Improvements (excluding Lessee's Equipment) on the termination date at the amount specified in Exhibit D of the Sublease as the price for the Improvements, (b) if a Deed of Trust shall at the time be in effect, deposit with the Beneficiary either (i) the amount of such purchase price as security for the payment of such purchase price if such offer is accepted, or, at Lessor's option, (ii) a written undertaking to pay such purchase price if such offer is accepted, and (c) return to Lessee any deposit made by Lessee pursuant to Section 17.01. Any rejection by Lessor of a purchase offer made by Lessee pursuant to Section 17.01 which is not accompanied by such an irrevocable offer of Lessor to purchase the Improvements and by the deposit or undertaking and return of deposit, if any, required by the preceding sentence shall be ineffective. If Lessee shall not have rejected any such offer by Lessor within 120 days after the Sublessee shall have delivered its initial notice of termination, such offer of Lessor shall be deemed to

have been accepted and Lessor will so purchase and Lessee will so sell the Improvements (excluding Lessee's Equipment) on the termination date. Any rejection by Lessee of any such offer of Lessor to purchase the Improvements in violation of any provision of a Deed of Trust shall be ineffective unless accompanied by the consent of the Beneficiary. Lessee will not accept the offer of the Sublessee to purchase the Land and the Improvements if Lessor rejects Lessee's offer to purchase the Land and fully complies with this Section 17.02.

17.03 Closing of Purchase of Land or Improvements;
Termination of Lease.

(a) At any closing of the purchase and sale of the Land pursuant to Section 17.01, Lessor will deliver to Lessee (or, at Lessee's option, to the Sublessee), a grant deed conveying fee simple title to the Land (or, in the case of a taking, so much thereof as shall remain, if any) free and clear of any mortgage, lien, encumbrance or charge other than permitted exceptions described in Exhibit C to this Lease and other than any mortgage, lien, encumbrance or charge which Lessee or the Sublessee shall have directly or indirectly created or permitted to be created or

to remain, and Lessee will pay or cause the Sublessee to pay the purchase price to Lessor. If, at any time when a Deed of Trust shall be in effect, Lessor shall fail to comply with any provisions of this Lease to be complied with on the part of Lessor in order to consummate any such purchase and sale referred to in the preceding sentence, the Beneficiary is hereby irrevocably appointed the agent and attorney-in-fact of Lessor and of each future owner of the Land in order to comply with such provisions, including but not limited to the execution and delivery, in the name and on behalf of Lessor or other owner of the Land, of a deed and/or other instrument of conveyance of the Land to the Sublessee.

(b) At any closing of the purchase and sale of the Improvements pursuant to Section 17.02, Lessee will, if requested by Lessor, deliver to Lessor a grant deed conveying title to the Improvements (excluding Lessee's Equipment), free and clear of any mortgage, lien, encumbrance or charge other than Permitted Exceptions and other than any mortgage, lien, encumbrance or charge which Lessor shall have created, and Lessor shall pay the purchase price to Lessee

(or to the Beneficiary, so long as a Deed of Trust shall be in effect, for application to payment of the indebtedness secured thereby). Lessee will pay all expenses incident to any purchase and sale of the Land pursuant to Section 17.01, and Lessor will pay all expenses incident to any purchase and sale of the Improvements pursuant to Section 17.02. This Lease shall terminate at the time, and (except in the case of a taking of all of the Land) subject to consummation of the purchase and sale of the Land or the Improvements in accordance with the terms hereof.

17.04 Insurance Proceeds and Awards and Payments.

In the event of a destruction of the Improvements or a total taking resulting in a purchase of the Land by Lessee or the Sublessee pursuant to Section 17.01 or a purchase of the Improvements by Lessor pursuant to Section 17.02, all insurance proceeds or (notwithstanding Section 13.06) the balance of awards and payments (on account of both the Land and the Improvements) remaining after payment of expenses provided herein to be paid from any such proceeds or awards, as the case may be, shall be paid over to the purchaser upon termination of this Lease and receipt by

the Seller (or the Beneficiary, if Lessee is the seller and a Deed of Trust is in effect) of the purchase price, provided that in case of such a purchase by Lessor, Lessor shall pay to the seller from such proceeds or such awards and payments an amount equal to the amount, if any, of basic rent paid by the Sublessee under the Sublease from and after the date of such destruction or such total taking which Lessee may be required to return to the Sublessee pursuant to the provisions thereof.

17.05 Assignment of Lessee's Rights under the Sublease. In order to assure to Lessor either the right to require the purchase of the Land by Lessee under the circumstances contemplated by this Article XVII or the rights of Lessee under the Sublease to accept the offer to purchase of the Land by the Sublessee under the circumstances and upon the terms set forth in Sections 2.03, 7.02 or 8.02 of the Sublease, and in order to assure to Lessor that Lessee will not take any action under such sections inconsistent with Lessor's rights under this Article XVII:

(a) Lessee hereby presently and irrevocably assigns, transfers and sets over to Lessor (such

assignment hereby expressly being made subject and subordinate to the rights of the Beneficiary under the Deed of Trust and the separate assignment of this Lease from Lessee to the Beneficiary) all rights of Lessee to accept the offer of the Sublessee to purchase the Land and the Improvements made pursuant to Sections 2.03, 7.02 and 8.02 of the Sublease. Provided, however, that such right shall be deemed assigned hereunder only to the extent necessary (i) to remove the power from Lessee to accept such an offer by the Sublessee during such period as Lessor shall have the power pursuant to Section 17.01 of this Lease to reject an offer of Lessee to purchase the Land and thereafter if Lessor shall have duly rejected such offer of Lessee and fully complied with Section 17.02; (ii) to remove the power from Lessee to fail to accept such an offer by the Sublessee in violation of Section 17.01, and (iii) to enable Lessor to require such a purchase by the Sublessee in the event Lessor shall have duly accepted

an offer of Lessee pursuant to Section 17.01 and, at least five days prior to the last date on which Lessee pursuant to the Sublease may accept the offer to purchase by the Sublessee, Lessee shall not have accepted such offer and shall not have made the security deposit with Lessor required by Section 17.01 (but under no other circumstances). Lessor hereby irrevocably constitutes Lessee the agent and attorney-in-fact of Lessor to exercise the right to accept the offer of the Sublessee to purchase the Land and the Improvements after Lessor shall have accepted an offer of Lessee pursuant to Section 17.01.

(b) Lessee hereby irrevocably appoints Lessor the agent and attorney-in-fact of Lessee and of each future owner of Lessee's interest hereunder and of the Improvements in order to comply with any provisions of the Sublease or any Deed of Trust, as the case may be, to be complied with on the part of Lessee in order to consummate such purchase, in the event the Sublessee is required to offer to purchase the Land and the Improvements and both Lessee and the Beneficiary fail to comply with such provisions (Lessee hereby agreeing to comply with such provisions), and the authority granted hereby shall include but not be limited to the execution

and delivery, in the name and on behalf of Lessee or other owner of the Improvements, of a deed and/or other instrument of conveyance of the Improvements to the Sublessee, but such appointment shall not prevent any failure on the part of Lessee to comply with the terms of this Article XVII from constituting a default hereunder.

ARTICLE XVIII.

OPTION TO RENEW LEASE

18.01 Renewal Terms. Lessor hereby grants to Lessee a series of options to renew the term of this Lease for seven consecutive terms (hereinafter called "Renewal Terms") of five years each: in each case by giving Lessor written notice of Lessee's election to exercise such option at least four months before the end of the primary term or the preceding renewal term, as the case may be. Each such renewal term shall be upon the same terms and conditions as are provided in this Lease in respect of the primary term, except that the basic rental for each renewal term shall be determined in the manner set forth in Sections 18.02 and 18.03.

18.02 Basic Rental for First Renewal Term. If Lessee shall exercise his first option to extend the term of this Lease, Lessee shall pay, as basic rental during said first renewal term, an annual rental (payable in advance in quarterly installments) which annual rental shall be the greater of the basic rental during the primary term or (b) seven percent (7%) of the appraised value of the land as of the first day of the eighth month preceding said first renewal term (August 11, 2000). Said fair market value shall be determined by a licensed real estate appraiser in the manner set forth in Section 20.02 of this Lease.

18.03 Basic Rental for Second Through Seventh Renewal Terms. If Lessee shall exercise its second or any subsequent renewal options, Lessee shall pay, as basic rental during said renewal term, an annual rental (payable in advance in quarterly installments) which annual rental shall be the greater of (a) seven percent (7%) of the appraised value of the Land on the first day of the eighth month preceding each such renewal term, as determined in the manner set forth in Section 20.02 of this Lease, or (b) the basic rental during the previous renewal term increased by the percentage increase, if any, occurring between the first day of the previous renewal term and the first day of July preceding the commencement date of

the renewal term for which basic rental is being determined, in the Consumer Price Index (all items) of the Bureau of Labor Statistics of the U.S. Department of Labor for Los Angeles or any then existing equivalent thereof.

18.04 Default. Lessee shall not be entitled to exercise any such renewal option while there is a continuing default under the terms of this Lease. The surrender of this Lease by Lessee during the primary or any Renewal Term shall thereupon terminate Lessee's option to any unexpired Renewal Terms.

ARTICLE XIX.

END OF LEASE

19.01 Title to Improvements upon Expiration of Lease. At the expiration of this Lease or earlier termination of the term hereof, the Improvements (excluding Lessee's Equipment) shall be surrendered to and shall become the full and absolute property of Lessor unless at the time of any termination of this Lease the Land shall be sold by Lessor to Lessee pursuant to Section 17.01 of this Lease, in which event no interest in the Improvements shall vest in Lessor. The parties hereto intend that title to the Improvements (excluding Lessee's Equipment) shall be

transferred to Lessor pursuant to the provisions hereof without further act on the part of Lessee, nevertheless, Lessee irrevocably appoints Lessor the true and lawful attorney of Lessee, in its name and stead and on its behalf, for the purpose of assuring the transfer of title to the Improvements pursuant to the provisions of this Article XIX, to execute and deliver all such deeds, bills of sale, assignments and other instruments as Lessor may consider necessary or appropriate for such purpose, with full power of substitution, Lessee hereby ratifying and confirming all that such attorneys or any substitute shall lawfully do by virtue hereof. Moreover, if so requested by Lessor, Lessee shall ratify and confirm any such transfer of title by executing and delivering to Lessor all proper deeds, bills of sale, assignments and other instruments as may be designated by such request. The obligations of Lessee hereunder shall survive the expiration or earlier termination of this Lease.

19.02 Upon the expiration or termination of this Lease, unless the Land shall be sold by Lessor to Lessee pursuant to Section 17.01 of this Lease, Lessee shall quit and surrender the Land to Lessor, and Lessee at its expense shall remove all of its property therefrom (except the Improvements) and repair all damage, if any, to the Land and the Improvements caused by such removal.

Any property of Lessee (including Lessee's Equipment) not so removed within 30 days after the expiration or termination of this Lease shall be considered abandoned by Lessee and may be appropriated, sold, destroyed or otherwise disposed of by Lessor without notice to Lessee or the Sublessee and without obligation to account therefor, and Lessee will pay or cause to be paid to Lessor, upon demand, all costs and expenses incurred by Lessor in removing, storing or disposing of such property. The obligations of Lessee under this Article XIX shall survive the expiration or earlier termination of this Lease.

ARTICLE XX.

ARBITRATION AND APPRAISERS

20.01 Arbitration. Whenever in this Lease it is provided that any question shall be determined by arbitration, such question shall be submitted to a board of arbitrators, three in number, one to be named by each of the parties hereto and the third to be selected by the two so named, and the decision of any two of such arbitrators shall be final and conclusive on the parties hereto. If the two arbitrators designated by the parties fail to select a third arbitrator within 15 days after the appointment by such parties, then either party shall have the right

to have a third arbitrator appointed in the manner, if any, provided under the laws of the State of California, or if such laws do not provide a manner of appointment, to apply to the Chief Justice of the Supreme Court of the State of California to designate a third arbitrator.

The parties to the arbitration shall have the right to offer evidence and testify at the hearings, to be represented by counsel and to cross-examine witnesses, and the arbitrators may consider facts and data which they may discover by their independent investigation and inquiry outside of such hearings. Subject to the foregoing, the arbitration shall be conducted in accordance with the laws of the State of California, if any, applicable to arbitration.

20.02 Appraisal. Whenever in this Lease it is provided that any question shall be determined by appraisal, such question shall be submitted to an appraiser satisfactory to Lessor whom shall be a qualified member of the American Institute of Real Estate Appraisers, or any successor of such Institute, or if such organization or successor shall no longer be in existence, a recognized national association or institute of appraisers. The appraiser shall act in the manner, and his decision shall

have the effect, provided herein for the acts and decisions of arbitrators, and, subject to the foregoing, the appraisal shall be conducted in accordance with the laws of the State of California applicable to arbitration.

The appraiser shall be one who has had extensive experience in the appraisal of properties in California. The appraisal shall be based upon the appraiser's knowledge of the area, applicable city planning projections and such other matters as he may deem relevant to an informed opinion. No representations or warranties are expected and no responsibility will be imposed on the appraiser for the correctness of his opinion other than for the exercise of professional care and the competence professed.

20.03 Selection of Arbitrator or Appraiser by Beneficiary. Lessor agrees that it will recognize any designation by Lessee or the Beneficiary to exercise the rights of Lessee with respect to the selection of arbitrators or appraisers in connection with any dispute arising hereunder which it is provided herein is to be determined by arbitration or appraisal pursuant to this Article XX.

ARTICLE XXI.

INSPECTIONS

21.01 Lessor and its authorized representatives (provided that no such representative shall be a competitor, or acting for a competitor, of the Sublessee) may enter the Land or any part thereof at all reasonable times for the purpose of inspecting the same. Lessor shall not have any duty to make any such inspection nor shall it incur any liability or obligation for not making any such inspection.

ARTICLE XXII.

ESTOPPEL CERTIFICATES

22.01 Lessee's Estoppel Certificate. Lessee will execute, acknowledge and deliver to Lessor, upon not less than 10 days' prior written request, but no more than twice in any one calendar year a certificate certifying (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect, as modified, and stating the modifications), (b) the dates, if any, to which the basic rental, additional rental and other sums payable hereunder have been paid and the amount of the basic rental

currently payable, and (c) that no notice has been received by Lessee of any default which has not been cured, or if any default for which notice has been received has not been cured, specifying the nature and period of existence thereof and what action Lessee is taking or proposes to take with respect thereto. Any such certificate may be relied upon by any prospective purchaser of the Land or any part thereof.

22.02 Sublessee's Estoppel Certificates. Lessee will cause the Sublessee to execute, acknowledge and deliver to Lessor, upon not less than 10 days' prior written request, but no more than twice in one calendar year, a certificate certifying (a) that the Sublease is unmodified and in full force and effect (or if there have been modifications, that the Sublease is in full force and effect as modified, and stating the modifications), (b) the dates, if any, to which the basic rent, additional rent and other sums payable under the Sublease have been paid and the amount of the basic rent currently payable thereunder, and (c) that no notice has been received by the Sublessee of any default under the Sublease which has not been cured, or if any default for which notice has been received has not been cured, specifying the nature and period of existence thereof and what action the Sublessee is taking or proposes to take with respect thereto.

22.03 Beneficiary's Estoppel Certificate. Lessee will cause the Beneficiary to execute, acknowledge and deliver to Lessor upon not less than 10 days' prior written request, but not more than twice in any one calendar year, a certificate certifying that the Beneficiary has not entered into any instrument modifying the Deed of Trust as in force at the date of original execution and delivery thereof (or if there has been any such instrument, identifying the same).

22.04 Lessor's Estoppel Certificate. Lessor will execute, acknowledge and deliver to Lessee, the Beneficiary or the Sublessee, or all of them, upon not less than 10 days' prior written request, but no more than twice in any one calendar year, a certificate certifying (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified and stating the modifications), (b) the dates, if any, to which the basic rent, additional rent and other sums payable hereunder have been paid and the amount of the basic rent currently payable, and (c) whether or not there are, to the knowledge of Lessor, then existing any defaults under this Lease (and, if so, specifying the same). Any such certificate may be relied upon by any prospective transferee of Lessee's interest hereunder or by any Beneficiary.

ARTICLE XXIII.

NOTICES

23.01 All notices, requests, demands, consents, certificates and other communications required or permitted to be given hereunder shall be in writing and mailed by first class registered or certified mail, postage prepaid, addressed:

(a) if to Lessor, at 570 Lexington Avenue, New York, New York, or at such other address as Lessor shall have furnished to Lessee and the Beneficiary in writing;

(b) if to Lessee, to Driftwood Properties, Inc., c/o Goldman, Sachs & Co., 55 Broad Street, New York, New York 10004, Attention: Lease Finance Department, or at such other address as Lessee shall have furnished to Lessor and the Beneficiary in writing;

(c) if to the Beneficiary, while Fidelity Union Trust Company is Beneficiary, at 765 Broad Street, Newark, New Jersey, or at such other address as the Beneficiary (or any successor Beneficiary) shall have furnished to Lessor and Lessee in writing;

(d) if to the Sublessee, at P.O. Box 92333, World Way Postal Center, Los Angeles, California 90009, Attention: President, or at such other address as the Sublessee shall have furnished to Lessor and Lessee in writing.

No notice hereunder to be given by Lessor or Lessee shall be deemed valid or duly given as against the Beneficiary unless a copy of such notice is given as provided herein to the Beneficiary. Such notice, request, demand, consent, certificate and communication shall be deemed to have been given two business days after the date it shall have been mailed, in any post office or branch post office regularly maintained by the United States Government.

ARTICLE XXIV.

QUIET ENJOYMENT

24.01 If Lessee shall pay the rents and other amounts payable by Lessee hereunder as and when the same become due and payable and shall perform and comply with all of the other terms and conditions hereof, Lessor will not interfere with the peaceful and quiet occupation and enjoyment by Lessee of the Land and to the extent it is

within the power of the Lessor, of the Improvements, which occupation and enjoyment shall be without hindrance, ejection or molestation by Lessor or those claiming through or under Lessor. This covenant shall be construed as running with the land to and against subsequent owners and successors in interest, and is not, nor shall it operate or be construed as, a personal covenant of Lessor, except to the extent of Lessor's interest in the Land and only so long as such interest shall continue, and thereafter this covenant shall be binding only upon such subsequent owners and successors in interest, to the extent of their respective interests, as and when they shall acquire the same, and only so long as they shall retain such interest.

ARTICLE XXV.

MISCELLANEOUS

25.01 Acceptance of Surrender. No surrender to Lessor of this Lease or of the Land or any part thereof or of any interest therein shall be valid or effective unless agreed to and accepted in writing by Lessor and the Beneficiary, and no act by any representative or agent of Lessor or the Beneficiary, other than such a written agreement and acceptance by Lessor and the Beneficiary, shall constitute an acceptance.

25.02 No Merger of Title. There shall be no merger of this Lease nor of the leasehold estate created by this Lease with the fee estate in the Land or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (a) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in any such leasehold estate and (b) the fee estate in the Land or any part thereof or any interest in such fee estate, and no such merger shall occur unless and until all corporations, firms and other entities, including the Beneficiary, having any interest in (i) this Lease or the leasehold estate created by this Lease and (ii) the fee estate in the Land or any part thereof or any interest in such fee estate shall join in a written instrument effecting such merger and shall duly record the same.

25.03 Remedies to be Cumulative. Each right, power and remedy of Lessor provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lessor of any one

or more of the rights, powers or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Lessor of any or all such other rights, powers or remedies.

25.04 No Waiver of Rights. No failure by Lessor or Lessee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, and no acceptance by Lessor of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term, except to the extent that such payment remedies such breach. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the rights of Lessor or Lessee with respect to any other then existing or subsequent breach.

25.05 Extension of Time for Unavoidable Delays. If any work or act required to be performed by Lessee under this Lease shall be delayed by reason of unavoidable delays, the time within which Lessee shall perform such work or act shall be extended for the period of time that Lessee shall have been so delayed.

25.06 Right of Redemption or Re-entry. In the event of any termination of the term of this Lease pursuant to Section 16.02 hereof or any repossession of the Land pursuant to Section 16.03 hereof, Lessee, so far as permitted by law, waives any right of redemption, re-entry or repossession, and the benefits of any laws or hereafter in force exempting property from liability for rent or for debt.

25.07 Consent Not Unreasonably Withheld. Wherever it is provided herein that the consent or approval of Lessor is required, such consent or approval shall not be unreasonably withheld or delayed.

25.08 Divisibility of Lease. If any term of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such term shall not be affected thereby.

25.09 Modification of Lease. This Lease may be changed, waived, discharged or terminated only by an instrument in writing, signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

25.10 Assigns and Successors. This Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto.

25.11 Article and Section Headings. The headings in this Lease are for purposes of reference only and shall not limit or define the meaning hereof.

25.12 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

25.13 Choice of Laws. This Lease is governed by the law of the State of California and any question arising hereunder shall be construed or determined according to such law.

ARTICLE XXVI.

PARKING, COMMON AREAS, DEED RESTRICTIONS

26.01 Lessee's Rights. It is understood and agreed that Lessee (and while the sublease is in effect, Sublessee), its invitees and patrons, in common with the

tenants and owners of other parcels in any shopping center which may be depicted on the plot plan attached hereto as Exhibit B, and their invitees and patrons, shall have the same rights, interest, easements and agreements now or hereafter possessed and enjoyed by Lessor in and to the use of the parking and common areas, if any, shown on the aforementioned plot plan, such use and operation being more particularly set forth in certain of the documents listed in Exhibit C annexed hereto and made a part hereof. Lessor agrees that it shall not agree to or approve any amendment, modification or cancellation of said documents without the prior written consent of Lessee (and while the Sublease is in effect, of Sublessee). Subject to the provisions of said documents, Lessor agrees that Lessee shall have the same rights as Lessor to examine the records of expenses in connection with the maintenance of the parking and common areas, as provided in said documents whenever Lessee in its discretion so desires.

26.02 Maintenance and Operations. It is further understood and agreed that Lessee will pay as additional rent hereunder throughout the term of this Lease (and will indemnify and hold harmless Lessor from any obligation to pay the same) all Lessor's share of the costs and expenses of the maintenance and operation of any such parking areas

and common areas, at the times, in the amounts and in the manner set forth in said documents. If the Leased Premises are located in a shopping center, any rights, agreements, easements and other interests, if any, in the nature of those described above shall, as between the Lessor and Lessee, be acquired by Lessor and shall be deemed without further action on the part of either Lessor or Lessee to be a part of the Leased Premises and subject to all the terms, covenants and conditions hereof.

26.03 Delegation of Rights. In the event the approval or consent of Lessor is required or permitted under the terms and conditions of any of the documents mentioned in Exhibit C during the term of this Lease, Lessor hereby delegates to Lessee the unconditional right to exercise such consent or approval with respect to the following matters:

(a) The exterior appearance and coloring of buildings in any shopping center, in which the Leased Premises are located, specifically including, but not limited to, the elevations, height, canopy design, and dimensions and location of building projections.

(b) The use of some portion of any parking area

in said shopping center on a temporary basis for promotional and publicity activities.

.....
(c) The erection, placement, maintenance and alteration of sign pylons, including the location, size, height, design, and other dimensions of pylon signs.

(d) Appointment and termination of the person exercising the duties of common area maintenance and operation, and the transfer or assumption thereof.

(e) Statements of the costs and expenses of operation and maintenance of the common areas, and Lessor hereby assigns to Lessee its right to receive such statements.

(f) Maintenance by other tenants of public liability, property damage, fire and casualty, and other insurance relating to other properties of any such shopping center.

(g) Giving of notices regarding breaches of any of the provisions of said documents, provided a copy of any such notice is supplied to Lessor.

The rights delegated hereunder may in turn be delegated
by Lessee to Sublessee.

IN WITNESS WHEREOF, Lessor and Lessee have
duly executed this Lease as of the day and year first
above written.

In the Presence of:

Lillian P. Humberg

TRUSTEES OF GENERAL ELECTRIC
PENSION TRUST

By

[Signature] HJT

ACTING HEREIN BY A SINGLE TRUSTEE
PURSUANT TO ARTICLE V OF THE
GENERAL ELECTRIC PENSION TRUST

"Lessor"

[Signature]
MARVIN A. POMERANTZ

"Lessee"

EXHIBIT A

THRIFTY DRUG STORE NO. 410

NEWBURY PARK (THOUSAND OAKS), CALIFORNIA

LEGAL DESCRIPTION

PARCEL 1:

Parcel 3, in the City of Thousand Oaks, County of Ventura, State of California, as shown on parcel map filed in Book 6, Page 81, of Parcel Maps, in the office of the county recorder of said county, more particularly described as follows:

Beginning at the most easterly corner of said Parcel; thence along boundary lines of said Parcel 3, 1st South 76° 05' 46" West 98.38 feet; thence 2nd North 87° 30' 00" West 116.78 feet; thence 3rd North 2° 30' 00" East 93.00 feet; thence 4th North 87° 30' 00" West 126.00 feet; thence 5th South 2° 30' 00" West 15.00 feet; thence 6th North 87° 30' 00" West 50.00 feet; thence 7th North 2° 30' 00" East 167.50 feet; thence 8th North 87° 30' 00" West 141.68 feet; thence 9th South 13° 54' 14" East 10.42 feet; thence 10th South 87° 30' 00" East 6.38 feet; thence 11th South 2° 30' 00" West 21.66 feet; thence 12th South 13° 54' 14" East 19.33 feet; thence 13th North 76° 05' 46" East 174.00 feet; thence 14th South 13° 54' 14" East 225.85 feet to the point of beginning

EXCEPT one-half of all oil, gas, hydrocarbon substances and other minerals, but without the right to enter upon the surface of said land or the subsurface thereof to a depth of 500 feet below the surface, as excepted in the deed from Teresa A. Borchard, et al., recorded December 29, 1967 as Document No. 58378 in Book 3241 page 33 of Official Records.

ALSO EXCEPT the interest reserved by United Savings and Loan Association of California, a corporation in the deeds recorded April 2, 1969 as Document No. 16329 in Book 3464 page 497 Official Records and Document No. 16330 in Book 3464 page 502 Official Records as follows:

"EXCEPTING and reserving unto the grantor herein, all oil, gas, minerals, and other hydrocarbon substances lying below a depth of 500 feet from the surface thereof, but without the right of surface entry."

ALSO EXCEPTING therefrom all buildings and improvements, including but not limited to the fixtures, attachments and appliances and articles attached to said buildings and improvements and used in connection with the operation of said buildings and improvements, which buildings and improvements are and shall remain real property.

Parcel 2:

All easements rights and privileges contained in that certain instrument entitled Indenture of Establishment of Protective Covenants, Conditions and Restrictions and Grants of Easements executed by R-D-W Investment Company, a limited partnership, R-D-W Development Company, a limited partnership, E. F. Mac Conald Shopping Bag Food Stores, Inc , a Delaware corporation, and Thrifty Realty Company, a California corporation, dated December 2, 1969, recorded December 19, 1969 as Instrument No. 66526 in Book 3595 page 490 of Official Records.

Newbury Park (Thousand Oaks)

9/16/69

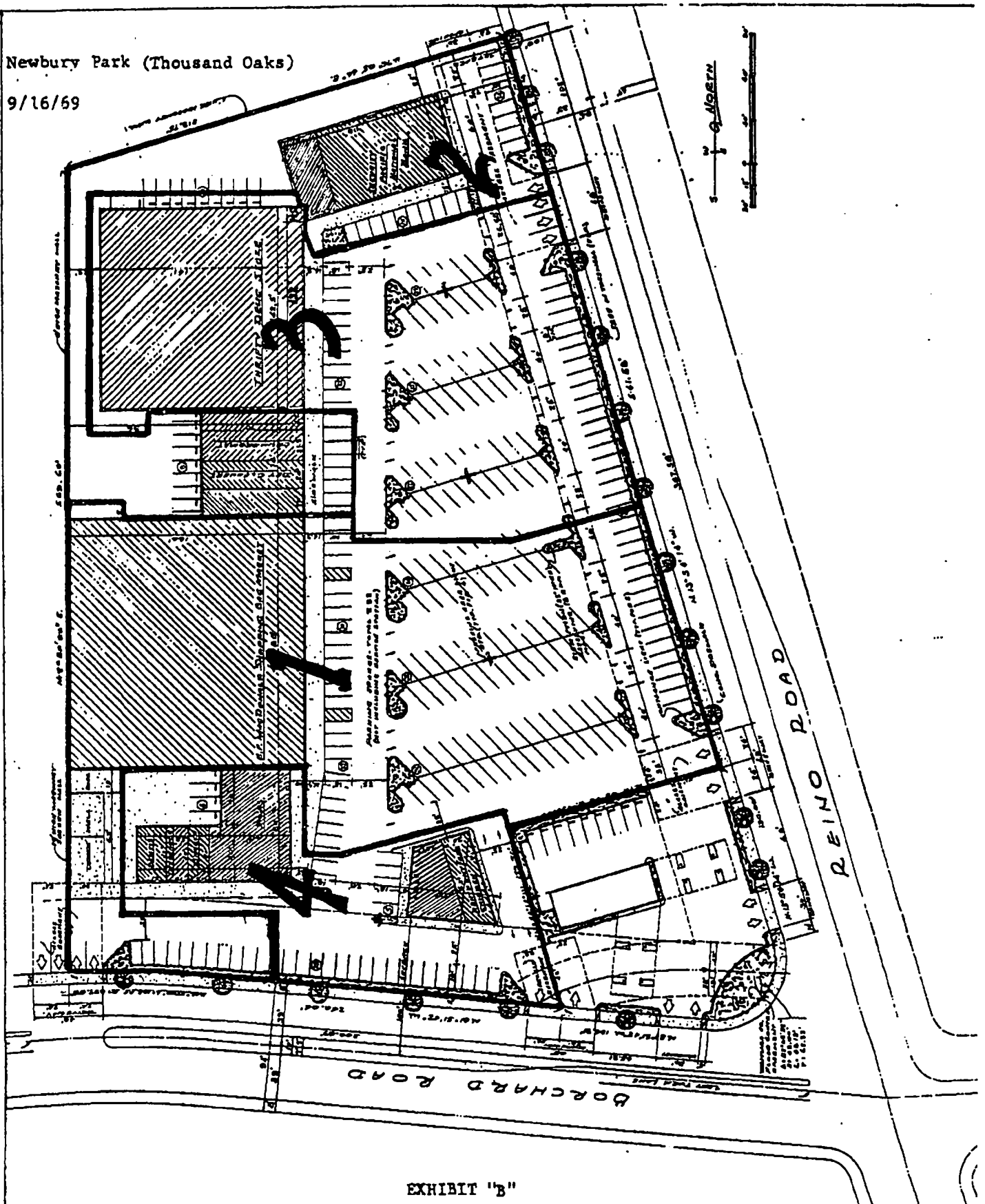


EXHIBIT "B"

EXHIBIT C

1. Taxes which are a lien but not yet due and payable.
 2. A covenant in favor of the City of Thousand Oaks prohibiting any development that would preclude access over and across easements as described therein, recorded June 18, 1969 in Book 3504, Page 243, Official Records
 3. Rights of others created by covenants, conditions, restrictions and easements contained in that certain Indenture of Establishment of Protective Covenants, Conditions and Restrictions and Grants of Easements executed by R-D-W Investment Company, a limited partnership, R-D-W Development Company, a limited partnership, E. F. MacDonald Shopping Bag Food Stores, Inc., a Delaware corporation, and Thrifty Realty Company, a California corporation, dated December 2, 1969, recorded December 19, 1969 as Instrument No. 66526 of Official Records in Book 3595, Page 490.
 4. An easement affecting the portion of said land and for the purposes stated herein, and incidental purposes.

In Favor of: Southern California Edison Company, a corporation.
For : An electric system consisting of underground conduits, performed cable in ducts, vaults, manholes, pull boxes, and including above-ground transformers, pedestals, markers and concrete pads and other appurtenant fixtures.
Recorded : May 18, 1970 in Book 3663, Page 171, Officials Records.
Affects : A portion of said land.
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EXHIBIT B

#3390 - THOUSAND OAKS, CA

Recording Requested by and)
after recording mail to:)
Borchard & Reino Plaza)
1875 Century Park East)
#700)
Los Angeles, CA 90067)
Attn: Peter Cohen)
Mail tax bills to:

Borchard & Reino Plaza)
1875 Century Park East)
#700)
Los Angeles, CA 90067)
Attn: Peter Cohen)

ASSIGNMENT OF GROUND LEASE AND DEED

FOR THE CONSIDERATION of Ten Dollars (\$10.00) in hand paid and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, SUSAN SANDELMAN, AS TRUSTEE OF THE ALEFF TRUST, having an address at c/o KIN PROPERTIES, INC., 185 NW Spanish River Blvd., Suite 100, Boca Raton, FL 33431 ("Assignor"), hereby assigns to BORCHARD & REINO PLAZA, having an address at 1875 Century Park East, #700, Los Angeles, CA 90067 ("Assignee"), and Assignee hereby accepts, all of the right, title and interest of Assignor in and to that certain Ground Lease between E.H. Malone, R.W. Lewis, R.E. Pfennig, Virgil B. Day, and R.H. Jones, as Trustees of General Electric Pension Trust collectively as Lessor, and Marvin A. Pomerantz, as Lessee, as assigned to SKBB Investments, as lessor, originally dated August 12, 1970 (the "Ground Lease"), a memorandum of which was recorded on August 12, 1970, in the Official Records of Ventura County, California

as Instrument No. 39466 in Book 3703, Page 410, covering the real property located at 161 North Reino Road, Thousand Oaks, California, more particularly described on Schedule A attached hereto and made a part hereof, and Assignor hereby sells, grants, transfers and conveys to Assignee all of Assignor's right, title and interest in and to all buildings and improvements, including but not limited to, the fixtures, attachments and appliances and articles attached to said buildings and improvements and used in connection with the operation of said building and improvements, of every kind and nature, located on the parcel of land described on Schedule A (collectively, "Buildings and Improvements"), subject only to those exceptions set forth on Schedule B attached hereto and made a part hereof. Assignor hereby covenants that it has not previously conveyed such right, title and interest in and to such Buildings and Improvements to any other person and that such Building and Improvements are free from any encumbrances done, made or suffered by Assignor or by any person claiming by, through or under it, except as may be set forth on Schedule B attached hereto and made a part hereof.

There shall be no merger of the leasehold estate created by the Ground Lease with the fee estate in the said parcel of land or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (a) the leasehold estate created by the Ground Lease or any interest in the Ground Lease or in any such leasehold estate and (b) the fee estate in the said parcel of land or any part thereof or any interest in such fee estate.

This Assignment of Ground Lease and Deed is executed and made to be effective
as of the ____ day of December, 2003.

Witness:

Mary K. Diebens

By: Susan Sandelman
SUSAN SANDELMAN, AS TRUSTEE
OF THE ALEFF TRUST

Witness:

BORCHARD & REINO PLAZA,
a California general partnership

By: [Signature]

SCHEDULE A

Parcel 1:

Parcel 3, in the City of Thousand Oaks, County of Ventura, State of California, as shown on Parcel Map filed in Book 6 Page 81 of Parcel Maps, in the office of the County Recorder of said County, more particularly described as follows:

Beginning at the most Easterly corner of said parcel; thence along boundary lines of said Parcel 3, 1st South 76° 05' 46" West 98.38 feet; thence 2nd North 87° 30' 00" West 116.78 feet; thence 3rd North 2° 30' 00" East 93.00 feet; thence 4th North 87° 30' 00" West 126.00 feet; thence 5th South 2° 30' 00" West 15.00 feet; thence 6th North 87° 30' 00" West 50.00 feet; thence 7th North 2° 30' 00" East 167.50 feet; thence 8th North 87° 30' 00" West 141.68 feet; thence 9th South 13° 54' 14" East 10.42 feet; thence 10th South 87° 30' 00" East 6.38 feet; thence 11th South 2° 30' 00" West 21.66 feet; thence 12 South 13° 54' 14" East 19.33 feet; thence 13th North 76° 05' 46" East 174.00 feet; thence 14th South 13° 54' 14" East 225.85 feet to the point of beginning.

EXCEPT one-half of all oil, gas, hydrocarbon substances and other minerals, but without the right to enter upon the surface of said land or the subsurface thereof to a depth of 500 feet below the surface, as excepted in the deed from Teresa A. Borchard, et al., recorded December 29, 1967 as Document No. 58378 in Book 3241 Page 33 of Official Records.

ALSO EXCEPT the interest reserved by United Savings and Loan Association of California, a corporation, in the deeds recorded April 2, 1969 as Document No. 16329, in Book 3464 Page 497 and Document No. 16330, in Book 3464 Page 502 both of Official Records, as follows:

"EXCEPTING and RESERVING unto the grantor herein, all oil, gas, minerals, and other hydrocarbon substances lying below depth of 500 feet from the surface thereof, but without the right of surface entry."

Except therefrom all buildings and improvements, including but not limited to the fixtures, attachments and appliances and articles attached to said buildings and improvements and used in connection with the operation of said buildings and improvements, which buildings and improvements are and shall remain real property.

Parcel 2:

All easements, rights and privileges contained in that certain instrument entitled Indenture of Establishment of Protective Covenants, Conditions and Restrictions and Grants of Easements executed by R-D-W Investment Company, a limited partnership, R-D-W Development Company, a limited partnership, E. F. MacDonald Shopping Bag Food Stores, Inc., a Delaware corporation and Thrifty Realty Company, a California corporation.

All buildings and improvements, including but not limited to the fixtures, attachments and appliances and articles attached to said buildings and improvements and used in connection with the operation of said buildings and improvements (as opposed to any such personal property purchased by Thrift Drug Stores Co., Inc. for use in the operation of its business), which buildings and improvements are and shall remain real property and which are located on the real property described in Parcel 1 above.

Parcel 3:

dated December 2, 1969 recorded December 19, 1969 as Instrument No. 66526 in Book 3595 Page 490 of Official Records.

12/29/2003 10:07 FAX 818 342 9764

FIDELITY COMMERCIAL DEPT

2008

EXCEPTIONS

SCHEDULE B

1. **The lien of supplemental taxes**, if any, assessed pursuant to the provisions of Chapter 3.5 (Commencing with Section 76) of the Revenue and Taxation code of the State of California.
2. **Water rights, claims or title to water**, whether or not disclosed by the public records.
3. **Easement(s)** for the purposes(s) shown below and rights incidental thereto as delineated or as offered for dedication, on the map of said tract.

Purpose: Proposed driveway
Affects: Northeast corner of said land and Westerly 10 feet of said land
4. **Covenants, conditions and restrictions** (deleting therefrom any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as set forth in the document

Recorded: June 18, 1969, Book 3504, Page 243, of Official Records

NOTE: Section 12956.1 of the Government Code provides the following: If this document contains any restriction based on race, color, religion, sex familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal housing laws and is void. Any person holding an interest in this property may request that the county recorder remove the restrictive language pursuant to subdivision (c) of Section 12956.1 of the Government Code.
5. **Rights of others created by Covenants, Conditions and Restrictions and easements** contained in that certain indenture of establishment of protective Covenants, Conditions and Restrictions and grants of easements executed by R-D-W Investments Company, a Limited Partnership, R-D-W Development Company, a Limited Partnership, E.F. Macdonald Shopping Bag Food Stores, Inc., a Delaware corporation and Thrifty Realty Company, a California Corporation, dated December 2, 1969 recorded December 19, 1969 as Document No. 66528, in Book 3595, Page 490, of Official Records.
6. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as set forth in a document:

In favor of: Southern California Edison Company, a Corporation
Purpose: Public utilities
Recorded: May 18, 1970, Book 3663, Page 171, of Official Records
Affects: Portion of said land
7. **An unrecorded lease** with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document

Entitled: Memorandum Ground Lease
Lessor: Trustees of General Electric Pension Trust
Lessee: Marvin Pomerantz
Recorded: August 12, 1970, Book 3703, Page 410, of Official Records

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

Assignment of the lessor's interest under said lease,

Assignor: Trustees of General Electric Pension Trust, a New York common law trust
 Assignee: Brutton/Reynolds/Shidler Investments Corporation, a Delaware Corporation
 Recorded: November 1, 1991, Instrument No. 91-162204, of Official Records

Assignment of the lessor's interest under said lease,

Assignor: Brutton/Reynolds/Shidler Investments Corporation, a Delaware Corporation
 Assignee: SKBB Investments, a California Limited Partnership
 Recorded: November 1, 1991, Instrument No. 91-162005, of Official Records

Assignment of the lessee's interest under said lease,

Assignor: Marvin Pomerantz
 Assignee: Susan Sandelman, as Trustee of The Aleff Trust
 Recorded: August 11, 1997, Instrument No. 97-85825, of Official Records

8. An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document

Entitled: Memorandum of Lease
 Lessor: Marvin A. Pomerantz
 Lessee: Thrifty Drug Stores Co., Inc., a California corporation
 Recorded: August 12, 1970, Book 3703, Page 423, of Official Records

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

9. ~~An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document~~

~~Entitled: Mechanics Gap
 Lessor: SKBB Investments
 Lessee: Angel City Fitness
 Recorded: April 18, 2003, Instrument No. 03-129148, of Official Records~~

~~The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.~~

*To be deleted
 at closing*

10. Rights of parties in possession of said land under unrecorded leases or any lesser rights.

Please forward copies of said leases or a certified rent roll for our examination.

If no leases exist on said land, a statement from the owner, given under penalty of perjury will be required.

Please forward this information prior to the closing date.